

EXHIBIT A

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
6 PHARMACY CASES LITIGATION)
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BEFORE: THE HONORABLE JENNIFER C. BOAL

MOTIONS HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, MA 02210

October 14, 2015
11:30 a.m.

Catherine A. Handel, RPR-CM, CRR
Official Court Reporter
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1 directors. Mr. Conigliaro has them. We're asking for a
2 limited production.

3 And, finally, about the argument about custody and
4 control, as I just said, these documents are plainly in MSM's
5 custody and control. Its officers and directors, as stated on
6 the Secretary of State's Website, have them in their
7 possession. I don't think there's any dispute about that, and
8 I would point the Court to the *Flagg* and the *Riddell* cases, as
9 cited in our papers.

10 If you have any other further questions, I'm happy to
11 answer them.

12 THE COURT: Mr. Rabinovitz, I guess what I'm also
13 trying to understand is -- well, let me state what my
14 understanding is, but please correct me if I am wrong.

15 That MSM had documents. It still has documents
16 because it's made some production of some documents, but some
17 of the documents were seized by the government. Do I
18 understand that correctly?

19 MR. RABINOVITZ: Yes, that's correct, your Honor, and
20 we've tried to comply with our obligations, as narrow as they
21 may be, under the broad release that Mr. Gottfried spoke of,
22 but the fact of the matter is, as I tried to say in my brief
23 brief, MSM does not have the documents that they are seeking.
24 These documents were produced by the government in the
25 criminal case to individuals and, as the government said in

1 their brief and as I reiterated in my brief, they did not
2 produce them to MSM. So, it's just wrong that MSM possesses
3 those.

4 What MSM has tried to do is -- with respect to
5 documents that they did not receive from the government -- I'm
6 sorry -- that the individuals did not receive from the
7 government in the criminal case, we've tried to produce the
8 documents that we can and we've had objections to the various
9 subsets of those documents and those aren't really the focus
10 of this motion at this time. It seems that the Saint Thomas
11 Entities are focusing the Court on the discovery that was
12 given to the -- or produced to the individual defendants, and
13 with respect to the motion as to MSM, MSM simply doesn't
14 possess those.

15 And, again, I would say that -- another point that
16 Mr. Gottfried made that I thought was very sound was that what
17 you haven't heard in this context of this motion is that they
18 have searched the repository and that they have come up empty
19 on any of these other categories of documents that they're
20 looking for, binders, things like that.

21 So, MSM doesn't have it because it wasn't produced to
22 them in the context of the criminal case that charged
23 defendants. They haven't said that they searched the
24 repository. And the last thing is, these are really NECC
25 documents. They have to do with -- the binders have to do

1 with training binders of NECC related things.

2 So, either they're in the possession of the trustee
3 and they've been put in the repository or they're in the
4 possession of the trustee and they're not in the repository,
5 but MSM does not possess them. That's the major point of my
6 argument.

7 THE COURT: All right. Anything you want to say on
8 behalf of Mr. Conigliaro? I know you're wearing two hats.

9 MR. RABINOVITZ: I am, your Honor, and I would like
10 to say something on behalf of Mr. Conigliaro, which is simply
11 that he's a criminal defendant and, as I said in my papers, he
12 doesn't possess anything other than what was given to me as
13 his lawyer in the criminal matter and, therefore, it's
14 completely an inappropriate motion to bring.

15 I understand why they brought it. They're trying
16 everything and anything to get at the government discovery
17 and, unfortunately for them, I hope that they're not going to
18 be able to.

19 I guess the only other thing I would point out is I
20 think that those cases that they cited are actually not
21 applicable. In the *Flagg* case the issue was that a third-
22 party provider possessed and controlled, I guess, texts that
23 were actually the property of the City of Detroit. That's not
24 this case. There's no third-party provider. The facts are
25 completely inapposite.